



PUBLIC NOTICE

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DA 03-2832

Released: September 4, 2003

CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON MCI PETITION FOR TEMPORARY, LIMITED WAIVER OF THE COMMISSION'S CALL ABANDONMENT RULES

CG Docket No. 02-278

COMMENT DATE: SEPTEMBER 11, 2003
REPLY COMMENT DATE: SEPTEMBER 18, 2003

On August 27, 2003, Worldcom, Inc. d/b/a MCI ("MCI"), filed a petition for temporary, limited waiver¹ of Section 64.1200(a)(6) of the Commission's rules, which: (1) prohibit telemarketers from abandoning more than three percent of calls answered by a person; (2) require telemarketers to deliver a prerecorded identification message when abandoning a call; and (3) require a telemarketer to maintain records demonstrating compliance with the three percent call abandonment rate.² The "call abandonment" rules become effective on October 1, 2003.

Specifically, MCI requests that the Commission grant it a 60-day waiver of the requirement that it comply with Section 64.1200(a)(6). MCI contends that it faces unique circumstances that likely will prevent MCI from obtaining and integrating the software and hardware necessary for compliance with Section 64.1200(a)(6) prior to the October 1, 2003 deadline.³ MCI explains that compliance with the abandoned call rule presents a complex problem because of the requirement that MCI both track the call abandonment rate and deliver a prerecorded identification message if the called person is not connected with a live sales representative within two seconds. According to MCI, the current method used by MCI to track abandoned calls—based on the "termination call progression event"—cannot be used to comply with the Commission's new rule because of the additional requirement that MCI deliver a prerecorded message. MCI maintains that the delivery of a prerecorded message cannot be

¹ See Petition for Temporary, Limited Waiver of Section 64.1200(a)(6) of the Commission's Rules, filed by MCI, August 27, 2003 (*Waiver Request*).

² 47 C.F.R. § 64.1200(a)(6).

³ Waiver Request at 2.

accomplished if the call has already been disconnected after two seconds.⁴ MCI contends that, in order to comply with Section 64.1200(a)(6), it must design and put in place new software and hardware that will allow it to calculate the percentage of abandoned calls based on indicia other than the “termination call progression event” that occurs after disconnection, and it must purchase new equipment to deliver the prerecorded message.⁵

MCI indicates that although the Federal Trade Commission (FTC) adopted similar requirements regarding abandoned calls in December 2002, the FTC’s rules apply only to companies over which it has jurisdiction.⁶ The FTC granted an extension of the effective date of its call abandonment rules until October 1, 2003, after determining that it would take additional time for companies to acquire or develop new software and hardware to comply with its rules. Thus, according to MCI, most companies have had nine months to make the necessary modifications to comply with the FTC’s rules. As a common carrier, however, MCI is not subject to the FTC’s jurisdiction and is therefore not required to comply with its rules. Moreover, MCI states that, unlike many other companies subject to the FTC’s rules because they hire third party telemarketers, MCI uses internal call centers for its telemarketing. Consequently, MCI argues it could not be certain what rules would apply to it until the FCC’s *Report and Order*⁷ was released on July 3, 2003. Therefore, despite its “devotion of substantial time and resources to this problem over the past two months,” MCI believes it may not be able to meet the Commission’s October 1 deadline.⁸

In the alternative, MCI requests that the Commission waive only the prerecorded message requirement of Section 64.1200(a)(6).⁹ MCI maintains that it could comply with the three percent requirement by using its “temporary, manual, data collection system,” provided it were relieved of the obligation to leave a prerecorded message. However, MCI contends that because the waiver request is for such a limited period of time (60 days from October 1, 2003), it would be simpler and less burdensome for the Commission to waive Section 64.1200(a)(6) in its entirety.

Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on MCI’s Waiver Request on or before September 11, 2003. Parties interested in submitting reply comments must do so on or before September 18, 2003. All comments should reference MCI’s Waiver Request, including the DA number of

⁴ Waiver Request at 3-4.

⁵ Waiver Request at 4.

⁶ See *Telemarketing Sales Rule*, 68 Fed. Reg. 4580, 4587 (Jan. 29, 2003). The FTC lacks jurisdiction over certain entities, including common carriers, banks, insurance companies, and airlines. The FTC indicated, however, that its amended rules will apply to third party telemarketers hired by such entities to call on their behalf.

⁷ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

⁸ Waiver Request at 6.

⁹ Waiver Request at 6.

this *Public Notice*. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The full text of the Waiver Request, comments and reply comments will be available for inspection and duplications during regular business hours in the Reference Information Center (RIC) of the Consumer & Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C. 20554. Copies may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com. To request materials in accessible formats for people with disabilities (Braille, large print, electronic file, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY).

Unless otherwise provided, requests for waiver of the Commission's rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it

would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules, *See* 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject Waiver Request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Erica H. McMahon or Richard D. Smith, Policy Division, Consumer & Governmental Affairs Bureau, at (202) 418-2512.

By the Chief, Consumer & Governmental Affairs Bureau.

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